

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>SBC Communications, Inc.,</b>	)	
<b>SBC Delaware Inc.,</b>	)	
<b>Ameritech Corporation,</b>	)	
<b>Illinois Bell Telephone Company</b>	)	
<b>d/b/a Ameritech Illinois, and</b>	)	
<b>Ameritech Illinois Metro, Inc.</b>	)	
	)	
<b>Joint Application for Approval of the</b>	)	<b>Docket No. 98-0555</b>
<b>Reorganization of Illinois Bell</b>	)	
<b>Telephone Company d/b/a Ameritech</b>	)	
<b>Illinois, and the Reorganization</b>	)	
<b>of Ameritech Illinois Metro, Inc.</b>	)	
<b>In Accordance With Section 7-204 Of</b>	)	
<b>The Public Utilities Act and for All</b>	)	
<b>Other Appropriate Relief</b>	)	

**McLEODUSA TELECOMMUNICATIONS SERVICES, INC.'S  
BRIEF ON REOPENING**

**I. INTRODUCTION**

This proceeding was reopened on the Commission's own motion as a result of the determination by Chairman Mathias and Commissioners Kretschmer and Harvill that additional information was needed concerning several statutory issues which must be considered in this proceeding. In a letter to the Hearing Examiners dated June 4, 1999, the Chairman stated that he and the aforementioned Commissioners desired additional information concerning several issues including the proposed merger's effect on competition. Attachment A to the June 4th letter identified several specific issues which SBC and Ameritech Illinois ("Joint Petitioners" or "SBC-Ameritech") and the parties were invited to address.

On June 10, 1999, Joint Petitioners filed their Amended Joint Application, as well as additional evidence in support of that filing, including proposed conditions to the merger. In response, on June 15, 1999, the Chairman sent another letter to the Hearing Examiners which contained an attachment that raised specific issues concerning Joint Petitioners' amended filing. The Chairman asked that the parties address the issues identified in the Attachment to the June 15th letter. On June 18, 1999, Joint Applicants filed their response to this letter.

Finally, on July 9, 1999, the Chairman sent a letter to the Hearing Examiners directing them to request that the parties file draft orders with their initial briefs outlining any specific conditions they seek to be included in the final order in this proceeding.

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA" or the "Company") intervened in this proceeding to address certain issues raised by the Commission on reopening. McLeodUSA is a competitive local exchange carrier ("CLEC") that began providing service in Iowa and Illinois in 1994, two years prior to the passage of the Telecommunications Act. Since that time, McLeodUSA has grown to provide competitive services to over 140,000 local exchange customers in eleven states. Over 90,000 of McLeodUSA's customers are residential customers, and the remainder are primarily small business. McLeodUSA serves almost 400,000 competitive local exchange lines. Its primary target markets have been second, third, and fourth-tier cities and towns in the Midwest and Rocky Mountain states. McLeodUSA recently announced an expansion of our target geography to include all the U S WEST and Ameritech states. (McLeodUSA Ex. 1, p. 3)

McLeodUSA presented the direct testimony on reopening of its Vice President - Law and Regulatory Affairs, David R. Conn. Mr. Conn described problems McLeodUSA has experienced competing with Ameritech for local service involving payments for reciprocal compensation, various aspects of the provision of unbundled loops, including payment of special construction charges for xDSL service, volume discounts, and the problems McLeodUSA encountered once it became an Ameritech wholesale customer. These problems were addressed in an effort to respond to the Commission's concerns. McLeodUSA believes that Commission approval of this merger should be conditioned on requirements that prevent these problems from occurring in the future in order that effective local competition can develop in Illinois.

## **II. ARGUMENT**

### **A. Ameritech is not paying reciprocal compensation to terminating all CLECS for Internet traffic.**

Although Ameritech claims to be in compliance with the Commission's orders requiring payment of reciprocal compensation on Internet-bound traffic, Ameritech does not in fact pay reciprocal compensation to all terminating CLECs with whom it interconnects. The Commission must condition approval of the merger on a commitment that Ameritech will in fact make such reciprocal compensation payments.

The evidence shows that Ameritech is paying reciprocal compensation on Internet-bound traffic only if the terminating company has been a party to a successful complaint against Ameritech on this issue. Ameritech has apparently decided it need not make such payments to terminating carriers who have not been parties to such complaints. Carriers

like McLeodUSA who have not spent the time and money to file and litigate such an action against Ameritech are not receiving reciprocal compensation payments from Ameritech. Unless Ameritech is required to make such payments, McLeodUSA will be forced to file a complaint and litigate exactly the same issues that have already been decided by the Commission and the 7th Circuit. (McLeodUSA Ex. 1, pp. 3-4) Ameritech's conduct is anti-competitive and discriminatory against McLeodUSA.

Ameritech's sole response on this issue was that the parties are in discussions and this is a legal which has not yet been resolved. (SBC/Am Ex. 12.1, p. 20) This response is insufficient. The Commission now has the ability to put this issue to rest once and for all. It should do so in the final order in this case as a means of ensuring that local competition can develop in Illinois after the merger.

In sum, the Commission should require SBC-Ameritech to pay reciprocal compensation to all CLECs on calls terminating to the Internet as a condition of approval of the merger, unless the FCC determines that a different compensation mechanism is appropriate.

**B. Ameritech has erected barriers to competition by the manner in which it provides unbundled loops to CLECs, and particularly as a result of its imposition of special construction charges.**

Contrary to the impression left by Ameritech, it does not provide unbundled loops to McLeodUSA in a way that furthers the goal of local exchange competition. This fact must be taken into consideration when the Commission issues its final order in this proceeding.

Special construction charges are a particular problem for McLeodUSA and other CLECs. (See ACI Ex. 1.0, p. 9) Special construction charges are sometimes levied when unbundled loops are ordered from Ameritech. These non-recurring charges can amount to thousands of dollars depending upon the facility requested. This is true even though Ameritech imposes no charge at all on its end use customer when it provides the same service to the same location. Special construction charges are often assessed when the loop must be conditioned for certain services, or when the customer is served through the use of a digital loop carrier. These circumstances arise in the provision of xDSL services. McLeodUSA views the imposition of special construction charges is a competitive barrier to competition for xDSL services. (McLeodUSA Ex. 1, pp. 4-6)

Joint Petitioners contend that these special construction charges are appropriate since they result in the “cost causer” paying. (SBC/Am. Ex. 12.1, p. 16) The actual result of this practice is the cost causer pays twice. Under the forward-looking TELRIC pricing standards used to determine rates for unbundled loops, loop costs already include the costs to unbundle the loop. (McLeodUSA Ex. 1, pp. 4-6) The witness put forth by Joint Petitioners to address this issue, Mr. Appenzeller, testified that he did not know whether the costs recovered through special construction charges, including those for conditioning the loop for xDSL service, are actually included in TELRIC-based UNE prices. (Tr. 2394-95) Although Mr. Appenzeller’s refrain on this point was to ensure that those who cause the costs pay, he conceded that the CLEC does not cause the cost of conditioning the line since conditioning amounts to removing interferers that Ameritech has put on the system. (Id.) The Commission can reach no other conclusion but that special construction

charges amount to a windfall for Ameritech and a competitive, discriminatory barrier to CLECs' entry into the market.

This situation is complicated by Ameritech's refusal to provide McLeodUSA and other CLECs with access to its existing databases which include information about the existence and type of copper facilities, the presence and types of digital loop carrier deployed, and the deployment of equipment such as load coils, taps and repeaters. As a result of this refusal, CLECs have no way of determining in advance whether there will be impediments to using unbundled loops to provide service to a particular customer, or when Ameritech might attempt to apply special construction charges. (McLeodUSA Ex. 1, p. 5; ACI Ex. 1.0, pp. 10-12) This makes doing business difficult.

In conclusion, the Commission should prohibit SBC-Ameritech from imposing unreasonable and cost-prohibitive special construction charges on CLECs. There is no valid reason for competitive carriers to be charged a special construction charge that Ameritech does not charge its own end users to provide the same loop at the same location to the same end user. Moreover, the Commission should require SBC-Ameritech to provide CLECs access to databases which include information about the existence and type of copper facilities, the presence and types of digital loop carrier deployed, and the deployment of equipment such as load coils, taps and repeaters, as a condition of approval of the merger.

**C.     The Commission must ensure that volume discounts continue to be offered.**

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The Chairman's June 4th letter raised questions concerning the provision of "volume discounts" for wholesale services. The evidence shows that the wholesale discounts for Centrex service may be in jeopardy, given Ameritech's tariff language. Since Centrex resale has been one of the primary means by which McLeodUSA has entered the local market, the Commission should be concerned about this issue.

Since 1994, McLeodUSA has been providing competitive services in Illinois through the resale of Ameritech's Centrex service. Where McLeodUSA uses Centrex resale, McLeodUSA functions [and is treated by Ameritech] as a single large customer with many different locations. Typically, discounts have been applied to McLeodUSA's usage based on this fact, i.e., that McLeodUSA is a single customer from the standpoint of the bill that Ameritech renders. (McLeodUSA Ex. 1, pp. 6-7)

Ameritech's tariff, however, contains language which arguably contradicts this approach. Specifically, the tariff states that "aggregation of services including usage services, for the purposes of applying volume discounts . . . is permitted for carriers on the same basis it is permitted for Ameritech Illinois' retail customers. Aggregation of services is limited to services under an account provided to a particular Carrier customer's premises." Ill. C. C. No. 20, Part 22, Section 1, 3rd Revised Sheet No. 1.1. To the extent this language is intended to prohibit aggregation across McLeodUSA's end-users, the FCC has determined this approach to be "presumptively unreasonable." In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 953 (August 8, 1996). (McLeodUSA Ex. 1, pp. 6-7)

Ameritech's sole response is that this issue is being addressed in another docket. (See SBC/Am Ex. 12.1, p. 20) Ameritech neither denies that the problem exists nor that it will in the future interpret the aforementioned tariff language in the manner that would foreclose volume discounts. Ameritech's silence on this point is deafening.

The Commission should make clear in its final order that Ameritech may not interpret this tariff language to prohibit volume discounts across end-use customers of a CLEC. Moreover, to ensure there is no problem in the future, Ameritech should be required to remove the aforementioned language from its tariff. This requirement will ensure that volume discounts continue to be provided to McLeodUSA and other wholesale Centrex customers.

**D. Ameritech's treatment of McLeodUSA under its resale agreement has been abysmal and must not be allowed to continue.**

The facts surrounding McLeodUSA's entry into the local market in Illinois, and particularly regarding its dealings with Ameritech, raise serious questions about Ameritech's treatment of CLECs and, thus, its commitment to opening the local market to competition. These facts should be considered by the Commission when if it determines whether to fashion conditions for approval of the merger.

McLeodUSA began providing service in Illinois through the resale of Ameritech's services in 1994. It was not until 1997, however, that McLeodUSA entered into a resale agreement with Ameritech in Illinois. At the time the agreement was signed, McLeodUSA purchased substantial services from Ameritech out of Ameritech's retail tariffs. McLeodUSA reasonably believed that entering into a resale agreement with Ameritech



would allow it to obtain the wholesale discount on the service but that the service would in all respects remain the same. In other words, McLeodUSA expected that entering into a resale agreement with Ameritech under which it would purchase at wholesale the services it had been purchasing at retail would have no operational implications. McLeodUSA was wrong. (McLeodUSA Ex. 1, pp. 7-9)

In the two years following execution of the resale agreement, McLeodUSA has been in a constant struggle with Ameritech to implement the agreement. For example, Ameritech has refused to provide McLeodUSA Voice Messaging after execution of the agreement even though McLeodUSA had been purchasing the same service for resale prior to entering into the agreement. To be clear, the dispute did not involve pricing, but rather whether the service had to be provided at all. Ameritech simply refused to continue to provide the service to McLeodUSA even at the same retail rates that any non-carrier customer would pay. (McLeodUSA Ex. 1, pp. 8-9)

Further, McLeodUSA has been alternatively advised at various times since the resale agreement was signed that it would:

- experience reduced levels of support from its Ameritech account team,
- have longer intervals to secure service, and
- have to change its network configuration in order to "implement" the resale agreement.

These threats were made even though the service McLeodUSA purchased under the resale agreement was identical to the service it purchased under the retail tariff.

(McLeodUSA Ex. 1, pp. 8-9) There can be no reasonable explanation for these problems, and none has been offered.

Rather than addresses these issues head on, Ameritech instead contends that the “voice mail” service is not a “telecommunications service” and therefore Ameritech need not provide it for resale, and in any event, McLeodUSA does not need it any longer. (See SBC/Am Ex. 12.1, p. 20) This response addresses only the tip of the iceberg. Again, what Ameritech does not state is most significant. Ameritech neither denies the facts raised by McLeodUSA nor defends its actions in any way.

McLeodUSA continues to work with Ameritech toward the resolution of these and other issues regarding the resale agreement. The point is that these facts are simply not consistent with a desire on the part of Ameritech for it to adequately meet the needs of its wholesale customers. (McLeodUSA Ex. 1, pp. 7-9) As a result of these problems, McLeodUSA proposes that, if the Commission approves the merger, it should make clear in its order that this type of conduct will not be countenanced and that Ameritech should treat its wholesale customers fairly and reasonably.

### **III. CONCLUSION**

The issues raised by the Chairman go to the heart of the problems McLeodUSA has experienced competing with Ameritech for local service. Those problems involve payments for reciprocal compensation, various aspects of the provision of unbundled loops, including the payment of special construction charges for xDSL lines, volume discounts, and the manner in which Ameritech treats its wholesale customers. The Commission should take these issues into consideration when ruling on the pending

merger. If the Commission determines to approve the merger, it should impose the conditions described herein and

in McLeodUSA's Draft Order to ensure that the goal of effective local competition is achieved.

Respectfully submitted,

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Carrie J. Hightman  
SCHIFF HARDIN & WAITE  
6600 Sears Tower  
Chicago, Illinois 60606  
(312) 258-5657

Attorney for  
McLeodUSA Telecommunications Services, Inc.

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